

**North Yorkshire Council**

**Community Development Services**

**Thirsk and Malton Constituency Area Planning Committee**

**21 MARCH 2024**

**ZE23/06814/MFUL - APPLICATION FOR THE ERECTION OF 3 NO. DRIVE THRU UNITS, TOGETHER WITH ASSOCIATED LANDSCAPING, BOUNDARY TREATMENTS, CAR PARKING, SERVICING, INTERNAL ROADS, ACCESS AND ASSOCIATED WORKS ON LAND NORTH OF EDENHOUSE AVENUE, OLD MALTON ON BEHALF OF COMMERCIAL DEVELOPMENT PROJECTS LTD & FITZWILLIAM TRUST CORPORATION LTD**

**Report of the Assistant Director Planning – Community Development Services**

**1.0 Purpose of the Report**

- 1.1 To determine a planning application for the erection of 3 no. drive thru units, together with associated landscaping, boundary treatments, car parking, servicing, internal roads, access and associated works on land north of Edenhouse Avenue, Old Malton.
- 1.2 The application is reported to the Area Planning Committee for determination because it is considered that significant planning issues have been raised.

**2.0 EXECUTIVE SUMMARY**

**RECOMMENDATION: That planning permission be GRANTED subject to any further requirements of the LLFA and subject to conditions and the completion of a Section 106 legal agreement with terms as detailed in Table 1 (contained within Section 10.78 of this report).**

- 2.1. The proposed development comprises the erection of 3 no. drive thru units, together with associated landscaping, boundary treatments, car parking, servicing, internal roads, access and associated works.
- 2.2. The application site amounts to approximately 1.06 hectares and is situated north of Old Malton close to the A64 Malton by-pass and the A64/A169/B1257 (Town Street) roundabout junction. The site forms part of the Eden Business Park which is just over 17 hectares of land identified as a commitment for employment development under Policy SD12 of the Ryedale Plan- Local Plan Sites Document (2019).
- 2.3. The general principle of development on this site is established through the employment land allocation (Policy SD12) in the Ryedale Plan- Local Plan Sites Document (2019) and the outline planning permission for industrial/commercial development at the site (see planning history).
- 2.4. The main issues through the course of the application have been the impact on the town centre, design, highways safety, local and residential amenity, flood risk and drainage. It is considered that these matters have been adequately addressed.



3.0

### 3. **Preliminary Matters**

3.1. Access to the case file on Public Access can be found here:

<https://planningregister.ryedale.gov.uk/caonline-applications/>

3.2. The following relevant planning history has been identified for the application site:

16/00487/73AM- Removal of Conditions 14 and 23 (detailed highway works) and Variation of Condition 40 to remove drawing no. 13051-011 Revision A (Connect) of approval 14/00426/MOUTE dated 24.03.2015. APPROVED 23.06.2016

16/00273/73AM- Variation of Conditions 10 and 19 of approval 14/00426/MOUTE dated 24.03.2015 to allow a phased approach to development of site, with archaeological details (WSI) and landscaping details submitted pursuant to that phase, and variation of Condition 12 to allow commencement of works to retention pond and pumping station without submission of details regarding safe non-car means of access. NOT DETERMINED.

14/00426/MOUTE- Erection of new livestock market (sui generis) comprising circa. 2,850 sq m floorspace: Agricultural Business Centre comprising circa. 6,010 sq m of floorspace for uses within Use Class A1, A2, A3, D1, B1, B2, B8 and agricultural vehicle sales (sui generis); and new Business Park comprising circa. 19,040 sq m of floorspace for uses within Use Class B1, B2, and B8 including premises for The Ginger Pig comprising 1,790 sq m of floorspace (for uses falling within Class B1, B2, B8 and A1) along with (in respect of all elements) all associated development including drainage, provision of services, landscaping, boundary treatments, attenuation ponds and access and associated highway works. (Site area 17.8ha). APPROVED 24.03.2015.

3.3. The following planning history has been identified for land adjacent to the application site within the wider business park/allocation:

21/00981/MFUL- Erection of a showroom, office and workshop building with associated car parking, service yard, external lighting, electricity substation and landscaping for an agricultural business use. APPROVED 22.10.2021. The development has been completed and is occupied by Ripon Farm Services.

21/00442/MFUL- Use of land as a highways depot to include the erection of an office/workshop building, erection of a salt barn and associated car parking, service yard and landscaping. APPROVED 04.08.2021. The development has been completed and is occupied by National Highways.

19/00839/FUL- Erection of two storey flat-roofed building to include offices and meeting rooms and staff canteen and toilet facilities. APPROVED 22.11.2019. The development has been completed and the units are occupied.

19/00757/FUL- Erection of petrol filling station with forecourt shop sales building, canopy, 3no. fuel pump islands, 2no. HGV fuel pump islands, air bay, goods-in delivery bay, customer parking and associated access, landscaping and boundary treatment works. APPROVED 07.01.2020. The development has lawfully commenced but has not been completed.

19/00241/MREM- Use of land adjacent to Unit B1 as an extension to the service yard to accommodate existing and future staff parking and to enable the storage of raw materials (metal rolls) in containers and finished products on racks (outline

approval 14/00426/MOUTE dated 24.03.2015 as amended refers). APPROVED 18.04.2019. The development has been completed and the land is in use.

18/00243/MREM- Erection of Unit A - Industrial unit subdivided into 4no.units and Unit B - Industrial unit subdivided into 2no. units: Phase 1 of reserved matters (outline approval 14/00426/MOUTE dated 24.03.2015 refers as amended). APPROVED 25.05.2018. The development has been completed and the units are occupied.

16/00412/FUL- Formation of roundabout access and internal access road to serve development at Edenhouse Road (revised details to approval 14/00426/MOUTE dated 24.03.2015). APPROVED 08.07.2016.

16/00251/MREM- Construction of retention pond with associated landscaping and construction of pumping station together with erection of perimeter fencing and formation of vehicular access: Phase 1 of reserved matters (outline approval 14/00426/MOUTE dated 24.03.2015 refers). APPROVED 24.05.2016.

#### 4.0 Site and Surroundings

- 4.1. The application site amounts to approximately 1.06 hectares and is situated to the north of Old Malton. The site forms part of the Eden Business Park which is just over 17 hectares of land identified as a commitment for employment development under Policy SD12 of the Ryedale Plan- Local Plan Sites Document (2019). The policy states that *“Employment development sites shown on the Policies Map as existing Employment Commitments will be treated as allocations for employment development. Employment development should be consistent with the site’s existing permission, in the event that the current permission expires.”*
- 4.2. The LPSD (2019) explains that *“the site is considered to be a major employment/business opportunity for the district which occupies a good location in relation to the principal town and strategic road network”*.
- 4.3. The site forms the north-eastern part of the land the subject of outline planning permission (ref. 14/00426/MOUTE, dated 24.03.2015) for *‘the erection of new livestock market (sui generis) comprising circa. 2,850 sq m floorspace: Agricultural Business Centre comprising circa. 6,010 sq m of floorspace for uses within Use Class A1, A2, A3, D1, B1, B2, B8 and agricultural vehicle sales (sui generis); and new Business Park comprising circa. 19,040 sq m of floorspace for uses within Use Class B1, B2, and B8 including premises for The Ginger Pig comprising 1,790 sq m of floorspace (for uses falling within Class B1, B2, B8 and A1) along with (in respect of all elements) all associated development including drainage, provision of services, landscaping, boundary treatments, attenuation ponds and access and associated highway works’*.
- 4.4. In 2015, the site was established as the Malton Food Enterprise Zone (FEZ). A Local Development Order covers the site in order to help facilitate a focus on the agri-food sector in this location. During the period 2016-2021 a number of planning permissions and Reserved Matters approvals were issued for ancillary infrastructure; roadways; industrial and commercial units; a highways depot; and a petrol filling station. The land identified for the livestock market and agricultural business centre is approximately 350 metres west of the site beyond Edenhouse Road.
- 4.5. The site is 680 metres north of the settlement of Old Malton and 400 metres north of the A64 Malton by-pass and the A64/A169/B1257 (Town Street) roundabout junction. The site is bounded by the A169 to the east, Edenhouse Road to the south and a showroom/office/workshop building occupied by Ripon Farm Services to the west

beyond which is the National Highways depot. To the north of the site is a native hedgerow and dense, mixed woodland shelter belt.

- 4.6. The principal vehicular access route to the site is off the A169 roundabout and via Edenhouse Road utilising the existing spur that serves the building occupied by Ripon Farm Services. The nearest public right of way (Bridleway no. 25.60/18/1) is beyond the woodland belt to the north.
- 4.7. The site is predominantly comprised of ruderal/ephemeral vegetation, with hedgerows, bare ground and sections of prepared ground with gravel used for recent vehicular plant access and building material storage. There are drainage ditches along the southern boundary and parts of the western and eastern boundaries of the site. The River Derwent is 1km south east of the site and is a designated Special Areas of Conservation (SAC) and Site of Special Scientific Interest (SSSI). The majority of the site falls within Flood Zone 3.
- 4.8. To the south west of the site is Eden Camp museum and Russell's farm equipment sales and repairs business. The nearest residential properties to the site are those of Eden House and Eden Farm house which are approximately 630 metres to the north-west. 'The Old Barn' is situated approximately 680 metres south of the site at the northern end of Town Street, Old Malton. The farm house at Windmill Farm is 750 metres to the west and Wyse House is 780 metres east of the site.

## **5.0 Description of Proposal**

- 5.1. Full planning permission is sought for the erection of 3 no. drive thru units, together with associated landscaping, boundary treatments, car parking, servicing, internal roads, access and associated works.
- 5.2. The application is accompanied by a Planning Statement; Design and Access Statement; Sequential Assessment (Retail); Transport Assessment; Travel Plan; Highways Technical Note; an Archaeological Evaluation report; Arboricultural Survey Report; Biodiversity Net Gain Assessment and calculations; Flood Risk Assessment (revised); Drainage Impact Assessment (revised); Drainage maintenance and management plan; Preliminary Ecological Appraisal; Economic Statement; and External Lighting Design.
- 5.3. The proposed 3 no. drive thru units would be single storey and occupied by food and beverage uses (mixed use Class E(b)/Sui Generis) with the intention of meeting the needs of passing motorists, employees of the adjacent units within the Business Park and users of the petrol filling station (consented but not yet constructed). The drive thrus would be operational 24/7.
- 5.4. Access to the site is off Edenhouse Road utilising the existing spur that serves the building occupied by Ripon Farm Services. Within the site the proposed roadway extends eastward with junctions off the road to serve each of the three units. The site layout indicates that the 3no. drive thru units would each occupy a corner of the broadly triangular shaped site. Unit 1 would occupy the largest proportion of the site on its eastern side nearest the A169, Unit 2 would be situated in the north west corner and Unit 3 in the south west corner.
- 5.5. Each unit would be served by its own internal circulation road, parking provision and designated bin storage areas within their demise. The site layout has been designed to be fully accessible to emergency, refuse and delivery vehicles. The development will incorporate electric vehicle charging points and bicycle storage/parking.

### Unit 1

- 5.6. Unit 1 is broadly rectangular with a total length of 33 metres and maximum width of 15 metres. The building would have a gross external floor area of 435m<sup>2</sup>. The indicative floor plan layout shows that the area available for customers collecting food and dining is approximately 90m<sup>2</sup> which provides for 79 covers. The majority of the building would be kitchens, office, staff room, storage and refrigeration, staff and customer WCs and the cash desks/serving areas.
- 5.7. The single storey flat roof building has three distinct parts and would have a cascading roofline with apex heights of 3 metres, 4.7 metres and 6 metres above ground level. Externally Unit 1 would comprise a combination of dark grey engineering brick, timber effect cladding and Anthracite Grey cladding to the walls. The majority of the glazing would be in the north west facing elevation with windows and doors in aluminium frames finished RAL 9005 ('Jet Black'). The drive thru lanes would loop around the western, northern and eastern sides of the building and the payment and serving hatch windows would be on the south east elevation (roadside). The customer parking area would be to the south west of the building with space for 45 cars.

### Unit 2

- 5.8. Unit 2 is broadly rectangular with a total length of 22 metres and maximum width of 13 metres. The building would have a gross external floor area of 214m<sup>2</sup>. The indicative floor plan layout shows that the area available for customer seating and collection of food and drink is approximately 95m<sup>2</sup>. The majority of the building would be the kitchen, staff room, storage and refrigeration, staff and customer WCs and the bar/serving area.
- 5.9. The single storey flat roof building would stand to an apex height of 4 metres above ground level. There would be a rectangular feature projecting 3 metres above the roof that would provide space for signage. Externally Unit 2 would comprise a combination of timber façade cladding panels and fibre cement façade panels with a light grey/brown colour finish ('LT60 Hessian'). The majority of the glazing would be in the north and south facing elevations with windows and doors in aluminium frames finished RAL 7022 ('Umbra Grey'). The drive thru lane would loop around the western, northern and eastern sides of the building and the payment and serving hatch window would be on the north elevation (rear). The customer parking area would be to the south and east of the building with space for 41 cars.

### Unit 3

- 5.10. Unit 3 is broadly rectangular with a total length of 18 metres and maximum width of 13 metres. The building would have a gross external floor area of 202m<sup>2</sup>. The indicative floor plan layout shows that the area available for customer seating and collection of food and drink is approximately 60m<sup>2</sup>. The majority of the building would be the kitchen, staff room, storage and refrigeration, staff and customer WCs and the serving area.
- 5.11. The single storey flat roof building would stand to an apex height of 5.3 metres above ground level. Externally Unit 3 would comprise a combination of horizontal timber cladding and composite façade panels RAL 7016 ('Anthracite Grey'). The majority of the glazing would be in the north facing elevation with windows and doors in aluminium frames finished RAL 7016 ('Anthracite Grey'). The drive thru lane would loop around the eastern, southern and western sides of the building and the payment and serving hatch window would be on the south elevation. The customer parking area would be to the north of the building with space for 13 cars.

### Landscaping

- 5.12. The Landscape Masterplan shows that the boundaries would comprise native hedgerows supplemented by tree planting (73no. trees) with internal roadways and parking areas interspersed with ornamental planting, grass verges and wildflowers. The plans show that on the eastern and south eastern perimeter the green buffer (wildflower area and individual trees) between the proposed car park and the public highway would be a minimum of 14 metres in width.

### Drainage

- 5.13. The on-site plot drainage will consist of separate surface and foul water drainage systems.
- 5.14. The Drainage Impact Assessment indicates that the site ground conditions are unsuitable for infiltration/use of soakaways. Therefore connection to watercourse has been proposed. The site benefits from existing surface water drainage infrastructure designed to accommodate future development plots. The drainage arrangements would involve connection to the southern perimeter swale on the plot boundary. The perimeter swale to the south is designed to accept an unrestricted flow of surface water from the site. The swale outfalls via a pipe network, ultimately discharging to watercourse via the Internal Drainage Board attenuation pond to the south west.
- 5.15. The site would connect to foul water drainage infrastructure to the west designed to accommodate an unrestricted flow of domestic foul water from the proposed development plot and ultimately discharges to an adopted Yorkshire Water Pumping Station.

## **6.0 Planning Policy and Guidance**

- 6.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning authorities must determine each application under the Planning Acts in accordance with Development Plan so far as material to the application unless material considerations indicate otherwise.

### Adopted Development Plan

- 6.2. The Adopted Development Plan for this site is:

Ryedale Plan- Local Plan Strategy (2013)

Policy SP1 General Location of Development and Settlement Hierarchy  
 Policy SP6 Delivery and Distribution of Employment/Industrial Land and Premises  
 Policy SP7 Town Centres and Retailing  
 Policy SP9 The Land-Based and Rural Economy  
 Policy SP10 Physical Infrastructure  
 Policy SP12 Heritage  
 Policy SP13 Landscapes  
 Policy SP14 Biodiversity  
 Policy SP16 Design  
 Policy SP17 Managing Air Quality, Land and Water Resources  
 Policy SP18 Renewable and Low Carbon Energy  
 Policy SP19 Presumption in Favour of Sustainable Development

Policy SP20 Generic Development Management Issues  
 Policy SP22 Planning Obligations, Developer Contributions and the Community  
 Infrastructure Levy

Ryedale Plan- Local Plan Sites Document (2019)

- Policy SD12 (New Employment Land Provision)

Emerging Development Plan – Material Consideration

- 6.3. The North Yorkshire Local Plan is the emerging development plan for this site though no weight can be applied in respect of this document at the current time as it is at an early stage of preparation.

Guidance - Material Considerations

- 6.4. Relevant guidance for this application is:
- National Planning Policy Framework 2023
  - National Planning Practice Guidance

**7.0 Consultation Responses**

- 7.1. The following consultation responses have been received and have been summarised below. Full comments are available to view on the Council's website.

Initial consultation

- 7.2. **Malton Town Council** Recommend refusal, based on change of use, economic impact on the town centre and the traffic issues that will be created
- 7.3. **Vale of Pickering Internal Drainage Boards** No objection
- 7.4. **Flood Risk (LLFA)** Further information required- hydraulic model; exceedance flow plan; and allowance for climate change.
- 7.5. **Environmental Health** No noise concerns, control over lighting levels and standard contaminated land conditions requested.
- 7.6. **Archaeology Section** No objection
- 7.7. **National Highways** recommend Construction Phase Traffic Management Plan condition
- 7.8. **Highways North Yorkshire** further information required on the queuing/stacking areas for the drive thru lanes and the operation and management of deliveries.
- 7.9. **Designing Out Crime Officer (DOCO)** The overall design and layout of the proposed scheme is considered acceptable. From a crime and disorder perspective, drive-thru restaurants are often described as 'Honey Pots', where people congregate and linger particularly in the evening. If these premises are not properly managed it can result in an increase in complaints of criminal or antisocial behaviour in the area. It is recommended that the applicant produce a comprehensive Management Policy, to demonstrate how they have considered crime and disorder and what measures they intend to put in place to reduce the likelihood of an increase in these levels. Requirement for provision of litter bins and for staff to carry out a "litter patrol" within



a 50m radius of the premises at the end of business each day and to clear any litter that could be reasonably attributed to the premises.

- 7.10. **Environment Agency** No objection subject to condition to ensure development proceeds in accordance with the Flood Risk Assessment.
- 7.11. **NYC Natural Services** the application is supported by a Preliminary Ecological Appraisal (PEA) and biodiversity net gain (BNG) assessment. The site is mainly bare or sparsely vegetated ground, so is of low ecological value. Risks to protected/important species are generally minor. However, the mitigation recommendations in the PEA are couched in tentative terms (“consideration should be given...”), which is unhelpful as these cannot be secured by condition. In consultation with the applicant, mitigation recommendations need to be firmed up and summarised in a clear table in a revised PEA report. We would then look to secure these by condition. Numbers, types and general locations of nest boxes should be specified.

It is proposed to sow “wild bird seed mixtures” under hedgerows (PEA para 5.4.5), though these do not seem to be specified in the Landscape Proposals. Such mixtures usually comprise crop plants which need to be re-established every year. This doesn’t seem appropriate.

The BNG assessment projects that large uplifts would be delivered via appropriate landscaping (312% for area-based habitats, 99% for hedgerows & 67% for ditches), which is amply compliant with policy.

The document by Lytec helpfully explains how ecological considerations have been taken into account in designing the external lighting scheme. It would be useful if the applicant’s ecologist could confirm that the lighting scheme fulfils their recommendations. A brief email will suffice.

The site is within 1 km of the River Derwent Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI). Consideration of impacts on the river in the PEA is disappointingly scant. The council must consider whether there are any risks to the ecological integrity of the SAC/SSSI. We assume that rigorous pollution prevention measures will be implemented during construction, as per industry best practice standards. Our advice is that if surface and foul water drainage infrastructure is sufficient to reduce risks of pollution to a negligible level, likely significant effects on the SAC can be ruled out. If this is the case, it should not be necessary to undertake an assessment under the Conservation of Habitats & Species Regulations 2017, unless Natural England advises otherwise. We are unable to advise on water quality and drainage.

The potential effects of external lighting on riverine insects (a SSSI feature) should have been considered in the PEA, as insects such as mayflies are known to be attracted to artificial light, resulting in mass mortality. As Natural England has not raised this issue in relation to other developments at Old Malton, I assume they do not consider it significant. On balance, it is likely that distance from the river and the presence of other sources of light pollution in the surrounding landscape would rule any likely impact.

Re. the Landscape Plan, a single August cut of areas sown with a wildflower mix is unlikely to maintain a species-rich sward. Over time, the sown mixture is likely to be replaced by False Oat-grass and associated species. We recommend that two cuts per year are considered (e.g. July & September or March and August) though this is the applicant’s choice. This is offered as advice, we do not require any amendment of the plan.

- 7.12. **Yorkshire Water Land Use Planning** the Drainage Impact Assessment (DIA) is acceptable. Condition recommended to ensure development is undertaken in accordance with the DIA.
- 7.13. **Economic Development** No response received
- 7.14. **Natural England** No response received

*Re-consultation (revised Ecological Appraisal and further lighting, drainage and highways information)*

- 7.15. **NYC Natural Services** The revised Ecological Appraisal clarifies most of the matters raised previously. The appraisal remains weak regarding potential effects on the River Derwent but for the reasons explained previously, we do not consider that any significant adverse effects are likely provided industry standard best practice for pollution prevention is observed. I note that Natural England do not seem to have responded, so presumably has no concerns.

I would recommend a simple condition to comply with the recommendations of the Ecological Appraisal (Eden Camp West drive-through: ecological appraisal, Revision B, December 2023 by Smeeden Foreman).

The lighting scheme has been reviewed and 'signed off' by the applicant's ecologist as meeting their mitigation recommendations in the revised PEA so no concerns.

- 7.16. **Highways North Yorkshire** No objection- Access to the wider Eden Business Park is from a roundabout on the A169 Malton to Pickering road and then via Eden House Road where a number of priority junctions have been formed to serve plots either side of Eden House Road.

Access to the proposed development site would be from a previously formed priority junction and road at the eastern end of Eden House Road that currently serves the Ripon Farm Services unit. These access arrangements are considered satisfactory with the road widths and alignment allowing access for both motorists and larger services vehicles. The Business Park also has footpaths on both sides of Eden House Road and leading to and from the nearby bus stops on the A169 and the wider footway network. However as much of Malton would be beyond the typical walking catchment distance, numbers of pedestrians accessing the site may be limited although there is a lit and surfaced footpath from Old Malton alongside the A169.

The Transport Assessment (TA) has considered the potential trip generation for the 3 units, with a maximum peak hour flow of 200 trips on weekdays predicted. It should be noted that a significant proportion of these trips are expected to already be on the road network, either passing by the site on the A169, diverting from elsewhere, or forming part of a linked trip. Based on surveys of other sites once open the percentage of these type of secondary trips may be as high as 65% meaning around only 35% of the 200 trips could actually be new traffic on the network. It is also noted the TA has not made any allowance for trips that could have been generated by this part of the Business Park under its previous permission.

Capacity modelling with the new development traffic has been undertaken and this has shown the both A169 roundabout and A64/A169 roundabout would continue to operate within capacity.

The internal site layout and tracking has shown how service vehicles could access each unit, although management of traffic through the car parks would be needed at delivery times. The site layout also includes footways for pedestrian access and a level of car parking provision in line with our standards.

There are no local highway authority objections to the proposed development but it is recommended that conditions are applied to any permission granted to secure provision of parking and turning areas; travel plan delivery; construction management; service vehicle delivery plan; and a contribution of £5000 for Travel Plan monitoring.

- 7.17. **Flood Risk (LLFA)** The updated Drainage Impact Assessment does not include all of the requested information as stated within the previous response. Further information is required in relation to peak flow control, volume control and hydraulic model and allowance for climate change. The LLFA suggests that the information requested is provided prior to determination as it is not clear that the surface water can be managed on or off site without causing increased risk.

#### Local Representations

- 7.18. The LPA has received a total of 18 representations from members of the public and local businesses of which 6 raise objections to the application, 3 are neutral and 9 support the proposal. Full copies of all the representations received by the LPA can be accessed via the Council's Online Planning Register.

#### 7.19. Objections

The reasons given in objection are as follows:

- No identified need for this facility in this location.
- The development of the fuel pumping station and service area opposite this site will provide the necessary welfare facilities for drivers in the local area
- Approving this development will have a significant and detrimental impact on existing retail businesses in our local towns and villages. It runs contrary to efforts to establish Malton as Yorkshires Food Capital
- Three drive thru's, on a relatively small site, is excessive
- Detrimental visual impact on the local landscape and wildlife
- This development appears more consistent with a city location.
- Unacceptable impact on highways safety due foot and cycle traffic having to cross a large junction of the A64
- No independent road safety audit of cyclists and pedestrians, potentially children crossing the A64
- A drive thru is, by its definition, based on car travel and is inconsistent with the declared climate emergency
- The drive thrus are not just for passing traffic but a destination in their own right
- Increase in traffic volumes- the area (A64/A169) is already congested during the holiday season and traffic would be backing up on the eastbound slip road of the A64
- Impact of traffic on residents of surrounding villages north of the application site, namely Ryton, Habton, Kirby Misperton, Great Barugh etc who have no choice but to travel right through this industrial development to the A169 every day.
- Developing a formal cycling/pedestrian path at the roundabout could be an option or improvements to the Malton to Pickering cycling route greatly improve the access from Malton via Pasture Lane to encourage safe active travel to the site.
- The buildings should incorporate roof-mounted solar panels

- The site should incorporate fast EV charging
- The operating hours should take account of nearby residential properties and the units should close at 10pm to avoid being used as car parks.
- External lighting proposals should mitigate impact on nocturnal habitats as well as reducing landscape impact from skyglow
- Any new signage should be in keeping with the rural area and appropriate for the scale of this development
- Littering- requires an enforceable litter management plan
- Obesity- detrimental to children's health

The responses include objections which raised matters which are not material planning considerations or beyond the remit of planning control and therefore not relevant to the determination of the application as follows:-

- Potential commercial competition between individual businesses and the financial impact on existing businesses
- Restricting the occupation of the units to only local businesses
- Requirement that the units utilise locally sourced products/ingredients

#### 7.20. Support

The reasons given in support are as follows:

- The proposed development represents a significant investment in the economy of the Malton area, and will provide additional local employment opportunities and contributing to the overall prosperity of the area
- Encourage more spending in our area rather than travelling to York or Scarborough
- A drive-thru is a convenient option for residents to access a variety of goods and services without the need to park or step out of their vehicles and provides greater choice for local residents
- This project can strike a harmonious balance between tradition and progress, enhancing the overall vitality of the market town and meeting the evolving needs of its residents
- There are no services immediately adjacent to the A64 between Bilborough Top and Scarborough (a distance of over 40 miles) that have safe grade-separated access from both carriageways, the location of the proposed site seems appropriate
- Similar developments on the edge of other local market towns (ie Thirsk and Pocklington) operate without significant impact on existing local services, and they are also located where there is safe road access from major roads.
- Previous planning policy in the Malton area which concentrated retail and service-led developments in the town centre has resulted in levels of congestion/pollution which make it increasingly unattractive, and many people choose to drive to more accessible out of town areas in other locations. Malton is therefore haemorrhaging significant trade and income to York and Scarborough in these sectors.
- By strategically locating the establishment on the edge of the market town, traffic congestion within the town centre can be minimised
- The design and layout of the proposed buildings seems appropriate given the location and in the context of other recent buildings constructed in the immediate area.
- The drive thrus are far enough out of town not to damage the features of the town

## 8.0 Environment Impact Assessment (EIA)

- 8.1. The development falls within Schedule 2 Category 10(b) Urban Development Projects of The Environmental Impact Assessment Regulations 2017 (as amended) and exceeds threshold (i) due to the development site being over 1 hectare. As such the Council as Local Planning Authority have screened the development and found that it is not EIA development and no Environmental Statement is required to be submitted with the application. The Screening Checklist which acts as the report and decision is available to view on the Council's website. Nothing has changed since the Screening Decision and it is still effective for the Committee Decision. No conditions are required to rule of a likely significant environmental effect.

## 9.0 Main Issues

- 9.1. The key considerations in the assessment of this application are:
- Principle of the development;
  - Impact on the Town Centre;
  - Design, scale and form and impact upon the open countryside;
  - Highways safety and capacity;
  - Local amenity, public health and environmental protection;
  - Flood risk and drainage;
  - Contamination risks;
  - Biodiversity and ecological impact; and
  - Section 106 legal agreement.

## 10.0 ASSESSMENT

### Principle of the Development

- 10.1. Policy SP1 (General Location of Development and Settlement Hierarchy) of the RPLPS (2013) notes that Malton/Norton (the Principal Town) *"will be the focus for the majority of new development and growth, including the housing, employment and retail space"*.
- 10.2. Paragraph 85 of the NPPF (2023) states: *"Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future."*
- 10.3. Policy SP6 (Delivery and Distribution of Employment/Industrial Land and Premises) of the RPLPS (2013) relates to employment/industrial land and the site falls within land allocated for that purpose (Policy SD12 of the LPSD). Policy SP6 supports expansion land and new buildings for major employers/established businesses in this location.
- 10.4. The purpose of the employment land allocation is to attract business investment and create local employment opportunities at a site that is well positioned in relation to

the Principal Town and strategic road network. The application site benefits from outline planning permission and a site allocation which establishes the principle of an employment generating land use. The outline application was accompanied by an indicative Site Layout Plan within which the eastern area (which the application site falls within) was identified as providing industrial, offices and workspace.

- 10.5. The proposed development also has the potential to make the business park a more attractive option for industrial and commercial operators considering investment in the area. The proposal will serve the local market, those employed at the business park and passing traffic on the A169 (north and south bound traffic) and the A64 (east and west bound traffic). The proposal provides an opportunity to take advantage of linked trips and is a use which can be considered complementary to the approved petrol filling station to the south (lawfully commenced but not yet built).
- 10.6. Whilst not a traditional employment use the proposal will still generate a not insignificant amount of employment. The Economic Statement accompanying the application forecasts that the development construction phase would generate 45 direct FTE construction jobs as well as supporting a further 55 indirect FTE jobs. Furthermore, once complete and operational, the development would generate employment for 100 direct FTE jobs on-site. Other positive economic benefits include an additional £4.9 million of Gross Value Added (GVA) during construction and an additional £4.1 million of GVA per annum through direct operational employment.
- 10.7. It is considered that in light of the existing supply of vacant plots within the Business Park awaiting development and the adjacent land being identified as a 'Broad Location for Future Employment' it is unlikely the proposed development would result in a shortfall in land availability for employment uses in the locality. Similarly, the proposed development would not inhibit the future relocation Malton's livestock market to a purpose-built facility at the allocated site.
- 10.8. The proposal represents a mixed Use Class E(b) and Sui Generis use for the sale of food and drink for consumption on the premises and off the premises. The recent approvals for the Ripon Farm Services building (ref. 21/00981/MFUL) and the petrol filling station (ref. 19/00757/FUL) illustrate the flexibility of employment uses built into the outline permission.
- 10.9. The proposed development would enhance economic activity and create employment that would comply with the aims of Policy SP6 of the RPLPS (2013) and is considered to be acceptable in principle. It is relevant to note that the outline planning permission also allows for a degree of Class A1, A2 and A3 floor space (non- Use Class E) which establishes the principle of some non-Class B floorspace at the site.

#### Impact on the Town Centre

- 10.10. Section 7 of the NPPF (Ensuring the vitality of town centres) highlights that planning decisions should support the role that town centres play at the heart of local communities. Within the Local Plan Strategy Policy SP7 of the RPLPS (2013) supports proposals which maintain and enhance the vitality and viability of the Town Centre. It is at this point that the café and restaurant elements would be proposals

which the LPA would expect to be located within the town centre, or be subject to sequential assessment.

- 10.11. The NPPF glossary of terms defines 'main town centre uses' and includes drive-thru restaurants. The NPPF, at paragraphs 90 and 91, sets out a sequential test to guide main town centre uses towards town centre locations first, then if no town centre locations are available, to edge of centre locations, and, if neither town centre locations nor edge of centre locations are available, to out of town centre locations. Local Plan Policy SP7 (Town Centres and Retailing) of the RPLPS (2013) also has this requirement.
- 10.12. Paragraph 92 of the NPPF (2023) identifies that: *"When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored"*.
- 10.13. The sequential test assesses whether there are other suitable, available or viable sequentially preferable sites which could accommodate the proposed development. The sequential test provides for appropriate flexibility in the development proposed but there is no requirement to consider disaggregation i.e. whether parts of the proposal could be located in the town centre or in an edge of centre location.
- 10.14. Planning practice guidance acknowledges that the use of the sequential test should recognise that certain main town centre uses have particular market and locational requirements which mean that they may only be accommodated in specific locations. In this case the proposal is not for conventional restaurants but 3no. freestanding drive-thru' restaurant units which by definition require vehicular access and circulation through or around the buildings.
- 10.15. The application is accompanied by a sequential test which sets appropriate site search parameters and adopts a suitable identification methodology. The sequential test identified four potential sites and assessed availability, suitability and viability. The sites assessed were: Former ATS site, Commercial Street, Norton; Livestock Market, Market Place, Malton; Wentworth Street Car Park, Malton; and the former car dealerships, York Road, Malton.
- 10.16. The assessment confirms that even when allowing for an appropriate degree of flexibility, none of the identified sites can be considered suitable, viable and/or available for the development proposed. It is agreed that a site elsewhere would not serve both traffic on the A169/A64 or service and compliment the requirements of employees at, and visitors to, the strategic employment development which is being delivered on the wider site.
- 10.17. The site is considered to be locationally appropriate for the nature of the development proposed and it would not undermine the strategy or policies of the Development Plan as they relate to the principal town and the development proposed. As a result, the application is considered to comply with the sequential approach to site selection and is in accordance with the NPPF and Policy SP7 of the RPLPS (2013).
- 10.18. It should be noted that a retail impact assessment is not required as the development is below the thresholds set out within paragraph 94 of the NPPF (2,500m<sup>2</sup>) and Policy SP7 of the RPLPS (2013).

Design, scale and form and impact upon the open countryside

- 10.19. Paragraph 135 of the NPPF (2023) states that decisions should ensure that developments will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development and are visually attractive as a result of good architecture, layout and appropriate and effective landscaping.
- 10.20. Policy SP16 of the RPLPS (2013) states that *“Development proposals will be expected to create high quality durable places that are accessible, well integrated with their surroundings and which: Reinforce local distinctiveness ; Provide a well-connected public realm which is accessible and usable by all, safe and easily navigated; and Protect amenity and promote well-being”*. The policy goes on to state *“To reinforce local distinctiveness, the location, siting, form, layout, scale and detailed design of new development should respect the context provided by its surroundings”*.
- 10.21. Policy SP20 of the RPLPS (2013) states that *“New development will respect the character and context of the immediate locality and the wider landscape/townscape character in terms of physical features and the type and variety of existing uses”*.
- 10.22. The site is situated towards the southern side of the Vale of Pickering. The site is relatively flat land within a growing Business Park with a wider rural setting interspersed by small woodland blocks and woodland belts. In terms of nearby vantage points there are no public rights of way in close proximity to the site but the site is clearly visible from the public highway to the east.
- 10.23. The majority of the occupiers of plots immediately adjacent to the application site and within the wider business park occupy large, utilitarian buildings with predominately blank facades suited to their industrial/commercial use. In contrast the proposed single storey units are considered to be ‘human scale’ being of a much reduced size and more modest proportions in comparison to the adjacent industrial/commercial buildings within the business park. The result would be a diminishing hierarchy of buildings when the business park is viewed west to east towards the main road. In addition the unit nearest the road (Unit 1) incorporates a stepped roof line to break up the form and bulk of the building.
- 10.24. The proposed units would be located in a visually prominent position on the eastern edge of the business park and it is considered that the land use is suited to this road side plot with good visual permeability for passing drivers. The site layout illustrates that the units can be appropriately spaced without resulting in a crowded or overdeveloped appearance to the plot.
- 10.25. The materials palette for existing buildings within the business park is dominated by light grey and off white coloured profiled steel composite sheeting. The exception is the adjacent building to the west (Ripon Farm Services) which includes a showroom and provides visual interest with large areas of curtain glazing to the front elevation.
- 10.26. The design, materials and external appearance of the proposed units is standardised to fit the corporate identity of the intended occupier with a focus on a contemporary



aesthetic with external materials consisting of glazing, timber and composite cladding panels.

- 10.27. The proposed materials seeks to provide a degree of visual interest to soften the appearance of the buildings through the use of recessive colours to external wall panels and natural materials such as timber cladding. External flues and ventilation/extraction units would be discreetly positioned to the rear of each unit or within the roof parapet.
- 10.28. The proposed buildings are relatively low profile and the established tree planting to the north provides a sense of enclosure and separation from the wider open countryside. The site layout ensures the buildings and hardstanding are subject to a suitable stand off from the established woodland belt to the north which would be protected during the construction phase.
- 10.29. The existing woodland planting to the north forms a backdrop for the development and the proposed landscaping scheme is well-considered and varied and would create a visually attractive approach to the Business Park. Green buffers along the site periphery would soften the appearance of the site and provide a degree of screening to the main car park area.
- 10.30. Overall, it is considered that the development, in the context of the wider of the business park site, would not have an adverse impact on the character of the area and the development exhibits a design quality that meets the requirements of Policies SP16 and SP20 of the RPLPS (2013).

#### Highways safety and capacity

- 10.31. Policy SP20 (Generic Development Management Issues) of the RPLPS (2013) advises that *“Access to and movement within the site by vehicles, cycles and pedestrians would not have a detrimental impact on road safety, traffic movement or the safety of pedestrians and cyclists. Information will be required in terms of the positioning and treatment of accesses and circulation routes, including how these relate to surrounding footpaths and roads”*.
- 10.32. Paragraph 115 of the NPPF (2023) advises that *“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe”*.
- 10.33. The application is accompanied by a Transport Assessment; Travel Plan; and a Highways Technical Note. Due to the site’s proximity to the A64 the Local Planning Authority has consulted with National Highways in addition to the Local Highway Authority (LHA).
- 10.34. The site will be accessed via an existing priority junction on the Ripon Farm Services access road which joins Edenhouse Road and in turn links to the A169 roundabout to the east. The LHA is satisfied with the access arrangements confirming that the road widths and alignment allow access for both motorists and larger services vehicles.
- 10.35. The site has a good level of accessibility and, whilst it is clear that the development would primarily serve those visiting the site by car, as acknowledged by the LHA, the site benefits from suitable footpath provision for pedestrians. In addition the applicant’s

Travel Plan seeks to promote active and sustainable means of travel for staff as well as customers and highlights that the site is in close proximity to a bus stop on the A169.

- 10.36. Within the site there will be 99 car parking spaces and 18 bicycle parking spaces to serve the three units which aligns with adopted standards. In addition the development will incorporate electric vehicle charging points.
- 10.37. The proposed site layout provides for service vehicle manoeuvres with each unit having a dedicated delivery bay. The LHA has highlighted that management of traffic through the car parks would be needed at delivery times.
- 10.38. With regard to vehicular traffic the highways officer notes that the predicted trip generation for the development (3 drive thru units) would be a maximum peak hour flow of 200 trips on weekdays.
- 10.39. There is local concern from the Town Council and individual members of the public in relation to the highways impact but it is relevant to note that the site allocation (employment use) and the outline permission envisaged that development of the site would inevitably involve vehicular traffic and increased trip generation.
- 10.40. With regard to the current proposal a significant proportion of the trips associated with the drive thrus are expected to already be on the road network, either passing by the site on the A169, diverting from elsewhere, or forming part of a linked trip. The LHA note that survey data from similar developments indicate that around only 35% of the 200 trips could actually be new traffic on the network.
- 10.41. The highways officer has confirmed that despite the traffic associated with the development both the A169 roundabout and A64/A169 roundabout would continue to operate within capacity.
- 10.42. There are no National Highways objections subject to a condition to secure a construction management plan. There are no LHA objections to the proposed development but it is recommended that conditions are applied to any permission granted to secure the provision of parking and turning areas; travel plan delivery; construction management; a service vehicle delivery plan; and a contribution of £5000 for Travel Plan monitoring.
- 10.43. It is considered that the site can be developed for 3no. drive thru units without resulting in an adverse effect on highway safety or capacity and complies with the requirements of the NPPF and Policy SP20 of the RPLPS (2013).

Local amenity, public health and environmental protection

- 10.44. As required by Policy SP20 (Generic Development Management Issues) of the RPLPS (2013) the development should respect the character of the area without having a material adverse impact on the amenity of present or future occupants, the users or occupants of neighbouring land and buildings or the wider community. Impacts on amenity can include, for example, noise, dust, odour, light flicker, loss of privacy or natural daylight or be an overbearing presence.
- 10.45. Generally, the proposed land use has the potential to have a prejudicial impact on residential amenity due to noise, disturbance, fumes and odours, litter and late night activity.

- 10.46. The application site is within an allocated business park which is remote in relation to residential properties with the closest being over 600 metres from the site. It would be necessary for each unit to incorporate plant and equipment for refrigeration, air conditioning and ventilation, however, due to the separation distance from sensitive residential receptors no noise or odour related concerns are anticipated. The site's location detached from the nearest settlement lends itself to 24 hour opening with negligible impacts. The Council's Environmental Health Officer (EHO) has confirmed no objections.
- 10.47. There are local concerns in relation to light pollution and the Council's EHO has requested control over lighting levels. The application is accompanied by a Lighting Assessment and CGI images to illustrate lighting levels in the evening. The lighting design seeks to minimise the impact during hours of darkness within the site and surrounding area. It is evident that the external lighting will only illuminate the road and car park surfaces and minimal light would fall onto the buildings.
- 10.48. The applicant has explained that light spill is controlled by purpose-made spill shields, avoiding light spill onto the woodland areas. The luminaire chosen has a Dark Sky Approval Certificate which will protect and preserve the natural night-time environment. Lighting control will also take account of illuminated signage associated with each unit and it is considered reasonable to impose a condition to control the external lighting scheme.
- 10.49. The Police Designing Out Crime Officer (DOCO) is satisfied with the overall design and layout of the proposed scheme but notes that from a crime and disorder perspective drive-thru restaurants are often described as 'Honey Pots', where people congregate and linger particularly in the evening.
- 10.50. It is noted that the site is at the entrance to the business park adjacent to a main road which will allow for a good level of passive surveillance and within the site it is anticipated that each unit will benefit from CCTV. However, the Police DOCO has recommended that the applicant produces a comprehensive Management Policy, to demonstrate how they have considered crime and disorder and what measures they intend to put in place to reduce the likelihood of an increase in these levels.
- 10.51. There are local concerns that development of this nature has the potential to increase littering in the locality once operational. It is understood that drive thru companies generally operate with a litter patrol policy with a defined litter pick zone together with litter bins being provided across the site. Ultimately, those members of the public who drop litter are committing an offence, nevertheless, it is considered prudent to impose a condition requiring a Litter Management Plan for each unit to be agreed prior to the unit being brought into use.
- 10.52. The LPA has received representations which raise concerns about health, fast food and links to childhood obesity. It is acknowledged that drive thru restaurants are generally operated by chain businesses with menus which are not weighted towards healthy options. The NPPF (2023) states that planning decision should, *inter alia*, enable and support healthy lifestyles. There is nothing to prevent the sale of healthy food choices and behavioural or consumer choices regarding the nature (and healthiness) of food purchased from such uses are not the subject of any relevant Development Plan policies, and there are no schools immediately nearby or within reasonable walking distance. In light of this the concern is not deemed to be significant in the planning balance.

- 10.53. It is considered that subject to conditions being imposed the proposed development would not give rise to a material adverse impact on the amenity, health or crime in the locality in compliance with the NPPF and Policy SP20 of the RPLPS (2013).

#### Flood Risk and Drainage

- 10.54. The NPPF and Policy SP17 requires development to incorporate sustainable drainage systems and techniques in line with the drainage hierarchy unless there is clear evidence that this would be inappropriate.
- 10.55. The site is within Flood Zone 3, a high flood risk area although the proposed development is classified in NPPF technical guidance as a 'less vulnerable' use and is appropriate in Flood Zone 3. The application is accompanied by a site specific Flood Risk Assessment and Drainage Impact Assessment.
- 10.56. It is noted that the plot is served by a privately maintained foul water network. With regard to surface water the development proposes 0.724 ha of impermeable surfacing and surface water is to be directed to open swales which, in turn, link to the attenuation pond to the south-west which discharges to Riggs Drain at a controlled rate of 1.4 l/s/Ha.
- 10.57. It is proposed that the surface water flooding risk is addressed by raising the site levels be 300mm above existing level to provide continuous falls to positively drained systems and remove any irregularities in the existing ground. In addition the minimum building finished floor level is set at 21.650m AOD thus providing an additional 500mm freeboard cover over the minimum required. The Environment Agency have confirmed no objections subject to the development being implemented in accordance with Flood Risk Assessment.
- 10.58. No objections have been raised by either the Internal Drainage Board or Yorkshire Water with the latter confirming the acceptability of the Drainage Impact Assessment subject to compliance being secured by condition.
- 10.59. The Flood Risk Assessment (FRA) demonstrates that the development can be deemed to be safe throughout its lifetime without increasing flood risk elsewhere.
- 10.60. The LLFA have reviewed the updated Drainage Impact Assessment and have stated that it does not include all of the requested information as detailed within their earlier consultation response. Further information is required in relation to peak flow control, volume control and hydraulic model and allowance for climate change. The LLFA suggests that the information requested is provided prior to determination as it is not clear that the surface water can be managed on or off site without causing increased risk.
- 10.61. The NPPF and Policy SP17 of the Local Plan Strategy require the Local Planning Authority (LPA) to direct development to areas with lowest probability of flooding (a risk based sequential approach). Paragraph 168 of the NPPF (2023) states that *'Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding'*.
- 10.62. The application is accompanied by a sequential test. Planning Practice Guidance requires alternative sites to be in a suitable location for the type of development proposed. The proposed development is intended to serve the passing motorist, users of the petrol filling station and employees of the wider business park. With this and the result of the retail sequential test (discussed earlier in this report) in mind the possible suitable sites was narrowed down to the same four considered earlier in this report.

- 10.63. The four sites have been assessed and were considered to be either unsuitable, unavailable, unviable or not sequentially preferable by virtue of location.
- 10.64. The sequential test demonstrates that there are no reasonably available sites in the area with a lower probability of flooding that would be appropriate for this type of development and as a result complies with the requirements of the NPPF and Policy SP17 of the RPLPS (2013). It is not necessary to consider the Exception Test, due to the 'less vulnerable' nature of the proposed development.

#### Contamination risks

- 10.65. The Council's EHO notes that the outline application (ref. 14/00426/MOUTE) was supported by a Phase I desktop report which recommends an intrusive site investigation (Phase II) is undertaken to quantify the risks set out in the conceptual site model of the Phase I desktop report. The Phase II report should be completed prior to the commencement of the proposed development.
- 10.66. It is recommended that, in order to satisfy the requirements of Policies SP17 and SP20 of the RPLPS (2013), the full suite of standard contaminated land conditions are applied to any grant of permission.

#### Biodiversity and ecological impact

- 10.67. Policy SP14 of the RPLPS (2013) aims to conserve and enhance biodiversity through the prevention of loss of habitat or species and the incorporation of beneficial biodiversity features.
- 10.68. The application is accompanied by a Preliminary Ecological Appraisal (PEA) and Biodiversity Net Gain Assessment and calculations. The PEA has been reviewed by the Council's Ecologist who notes that the site is mainly bare or sparsely vegetated ground of low ecological value and the risks to protected/important species are generally minor.
- 10.69. The proposed site enhancements include appropriate native species planting, retention and enhancement of hedgerows or replacement planting, wildflower seeding and incorporation of bird/bat nesting/roosting features. In addition precautionary working methods and/or mitigation have been recommended for badger, hedgehog, and breeding birds. The Council's Ecologist is satisfied with these proposals subject to the being secured by condition.
- 10.70. The application site is in close proximity to mature trees where there is potential for nocturnal wildlife and light sensitive species such as bats. The applicant proposes to implement a sympathetic lighting scheme that minimises illumination of trees and areas of new planting to the boundaries of the site. The Council's Ecologist notes that the lighting scheme has been approved by the applicant's ecologist and has no concerns.
- 10.71. Policy SP14 of the RPLPS (2013) and the NPPF require a net gain in biodiversity to be provided as part of new development schemes. This is not a scheme which is subject to the mandatory requirement for Biodiversity Net Gain by virtue of Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021) due to it being made prior to the regulations being enacted. Nevertheless, the Council's Ecologist notes that the BNG assessment projects that large uplifts would be delivered via appropriate landscaping (312% for area-based habitats, 99% for hedgerows & 67% for ditches), which is amply compliant with policy.

- 10.72. The site falls within the Impact Risk Zone for the River Derwent Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI). There is potential for adverse effects on the ecological integrity of the SAC/SSSI.
- 10.73. The applicant's Ecological Appraisal explains that there will be no adverse impact upon statutorily and non-statutorily designated sites as a result of the development due to a combination of distance from the proposal site, intervening land uses (roads and built up areas), pollution prevention controls, management of waste water on the site after development and the nature and scale of the proposals.
- 10.74. The Council's Ecologist agrees that due to its nature and location the proposed scheme is unlikely to have any direct or indirect impact on the SAC/SSSI provided pollution prevention measures (management of waste and surface water) are implemented during construction. The applicant's incorporate commitments to pollution prevention within the Ecological Appraisal and a condition shall secure the implementation of those measures.
- 10.75. Natural England have raise not raised any objections or notified the LPA that it is necessary to undertake an assessment under the Conservation of Habitats & Species Regulations 2017.
- 10.76. It is considered that the surface and foul water drainage infrastructure would be sufficient to reduce risks of pollution to a negligible level therefore likely significant effects on the SAC can be ruled out.
- 10.77. In light of the above it is considered that the development would not result in adverse impacts on habitats and protected species and appropriate mitigation and enhancement can be secured in line with the NPPF and Policy SP14.

#### Section 106 Legal Agreement

- 10.78. A Section 106 legal agreement will be required in line with Policies SP20 and SP22 of the Ryedale Plan Local Plan Strategy. The S106 will secure the Travel Plan monitoring commuted sum.

<b>Table 1</b>		
<b>Category/Type</b>	<b>Contribution</b>	<b>Amount &amp; Trigger</b>
Travel Plan Monitoring	Financial	£5,000

## **11.0 PLANNING BALANCE AND CONCLUSION**

- 11.1 The general principle of development on this site is established through the employment land allocation (Policy SD12) in the Ryedale Plan- Local Plan Sites Document (2019) and the outline planning permission for industrial/commercial development at the site.
- 11.2 This proposal represents development that receives general support in principle from Policy SP6 of the Ryedale Plan- Local Plan Strategy (2013) with regard to expansion land and new buildings for major employers/established businesses. The proposal also aligns with the aims of the NPPF in relation to economic growth and

employment. In light of the site allocation and outline planning permission there are sustainability arguments in favour of this location for drive thru' facilities.

- 11.3 The proposal represents good design and the application has demonstrated that it satisfies both the Town Centre sequential test and the flood risk sequential test whilst also demonstrating no unacceptable harm to the landscape and visual amenity; highway safety and capacity or the environment.
- 11.4 In conclusion, the proposal is considered to be in general accordance with the policies contained in the Development Plan when read as a whole and with no other material considerations indicating otherwise, the application is recommended for approval subject to any further requirements of the Lead Local Flood Authority; the below list of conditions; and a Section 106 legal agreement.

## 12.0 RECOMMENDATION

- 12.1 That planning permission be **GRANTED** subject to any further requirements of the LLFA and subject to conditions listed below and the completion of a Section 106 legal agreement with terms as detailed in Table 1.

### Recommended conditions:

#### Commencement time limit

- 1 The development hereby permitted shall be begun within three years of the date of this permission.

Reason: To ensure compliance with Section 51 of the Planning and Compulsory Purchase Act 2004

#### Approved plans

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan ref. 00\_01 Rev A, dated 27.10.2023  
 Proposed Site Plan ref. 01\_01 Rev C, dated 27.10.2023  
 Site Sections ref. 01\_03 Rev A, dated 27.10.2023  
 Proposed Unit 01 Drive Thru ref. 02\_01 Rev C, dated 27.10.2023  
 Proposed Unit 02 Drive Thru ref. 02\_02 Rev D, dated 27.10.2023  
 Proposed Unit 03 Drive Thru ref. 02\_03 Rev E, dated 11.03.2024  
 Landscape Proposals ref. LL01 Rev A, dated 01.11.2023

Reason: For the avoidance of doubt and in the interests of proper planning.

#### Phasing

- 3 No development shall commence until a detailed construction phasing plan has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure a satisfactory progression of construction works in compliance with Policy SP20.

#### Materials (surfaces)

- 4 Prior to installation details of the ground surfacing materials shall be submitted to

and approved in writing by the Local Planning Authority.

Reason: To ensure a satisfactory external appearance in compliance with Policies SP16 and SP20.

#### Materials (samples)

- 5 Prior to the commencement of any aboveground construction work for each unit details and samples of the materials to be used on the exterior of the unit shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure a satisfactory external appearance and to satisfy the requirements of Policies SP16 and SP20.

#### Boundary treatments

- 6 Prior to the commencement of any aboveground construction work details of the proposed means of enclosure and boundary treatments, including a schedule of materials and details of the size and species of any hedging, shall be submitted to and approved in writing by the Local Planning Authority. The details so approved shall be implemented in full before the development is first brought into use, unless otherwise agreed in writing with the Local Planning Authority.

Reason: To ensure that the development does not prejudice the appearance of the locality in compliance with Policies SP16 and SP20.

#### Provision of Approved Access, Turning and Parking Areas

- 7 No part of the development must be brought into use until the access, parking, manoeuvring and turning areas for all users have been constructed in accordance with the details approved in writing by the Local Planning Authority. Once created these areas must be maintained clear of any obstruction and retained for their intended purpose at all times.

Reason: To provide for appropriate on-site vehicle facilities in the interests of highway safety and the general amenity of the development in compliance with Policy SP20.

#### Travel Plan Delivery

- 8 The development must be carried out and operated in accordance with the approved Travel Plan. Those parts of the Approved Travel Plan that are identified therein as being capable of implementation after occupation must be implemented in accordance with the timetable contained therein and must continue to be implemented as long as any part of the development is occupied.

Reason: To establish measures to encourage more sustainable non-car modes of transport in compliance with Policy SP20.

#### Construction Management Plan

- 9 No development for any phase of the development must commence until a Construction Management Plan for that phase has been submitted to and approved in writing by the Local Planning Authority. Construction of the permitted development must be undertaken in accordance with the approved Construction Management Plan.



The Plan must include, but not be limited, to arrangements for the following in respect of each phase of the works:

1. details of any temporary construction access to the site including measures for removal following completion of construction works;
2. wheel and chassis underside washing facilities on site to ensure that mud and debris is not spread onto the adjacent public highway;
3. staffing numbers and the parking of contractors' site operatives and visitor's vehicles;
4. areas for storage of plant and materials used in constructing the development clear of the highway;
5. construction traffic routes;
6. measures to manage the delivery of materials and plant (including any abnormal loads) to the site including routing and timing of deliveries and loading and unloading areas;
7. protection of contractors working adjacent to the highway;
8. pollution prevention measures including noise and dust management;
9. details of site working hours;
10. details of external lighting equipment;
11. a detailed method statement and programme for the building works; and
12. contact details for the responsible person (site manager/office) who can be contacted in the event of any issue.

Reason: To safeguard the operation and free flow of traffic on the Strategic Road Network and in the interest of public safety and amenity in compliance with Policy SP20.

#### Litter Management

- 10 Prior to each unit hereby approved being brought into use a Litter Management Plan for that unit shall be submitted to and approved in writing by the Local Planning Authority. The litter management plan should confirm the operator's litter management policy and detail litter patrols (frequency and coverage), provision of bins and signage within the site. Thereafter, the development shall be carried out in accordance with the approved details for the lifetime of the development.

Reason: In the interest of the general amenity of the area in compliance with Policy SP20.

#### Landscape planting

- 11 Unless otherwise agreed in writing with the Local Planning Authority all planting, seeding or turfing set out in the approved drawing Landscape Proposals ref. LL01 Rev A, dated 01.11.2023 shall be carried out in accordance with the approved phasing plan (Condition 3) and beginning the first planting season following commencement of development or such longer period as may be agreed in writing with the Local Planning Authority. Any trees, plants or shrubs which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of the same size and species, unless the Local Planning Authority gives its written consent to any variation.

Reason: In the interests of visual amenity and to achieve a good standard of landscaping in compliance with Policies SP16 and SP20.

### Tree Protection

- 12 All works shall be carried out in accordance with the approved Arboricultural Survey Report dated October 2023 produced by Smeeden Foreman Ltd unless any variation is first agreed in writing by the Local Planning Authority. No site clearance or construction work shall commence on site in connection with the development hereby approved until the root protection areas (RPA) and protective fencing required by the Arboricultural Impact Assessment Plan and Tree Constraints Plan (contained within the approved Arboricultural Survey Report) are in place. The developer shall maintain such fences and ground protection until all development the subject of this permission is completed.

Reason: To preserve trees and hedges adjacent to the site in the interests of visual amenity and the character of the area in compliance with Policies SP16 and SP20.

### Drainage

- 13 The development hereby approved shall be carried out in accordance with the submitted Drainage Impact Assessment ref. 4656-JPG-XX-XX-RP-D-0633-S2-P05 produced by JPG Ltd, dated 22.02.2024, unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interest of satisfactory and sustainable drainage in compliance with Policy SP17.

### Flood Risk

- 14 The development hereby approved shall be carried out in accordance with the submitted Flood Risk Assessment ref. 4656-JPG-XX-XX-RP-D-0631-S2-P05 produced by JPG Ltd, dated 15.02.2024 and the following mitigation measures it details:

- Finished floor levels shall be set no lower than 21.650 metres above Ordnance Datum (AOD)

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/ phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: To reduce the risk of flooding to the proposed development and future occupants in accordance with the NPPF and Policy SP17.

### Ecology

- 15 All works shall be carried out in accordance with the recommendations of the Ecological Appraisal Revision B, dated December 2023 produced by Smeeden Foreman Ltd.

Reason: To secure appropriate ecological mitigation and enhancement to comply with the requirements of Policy SP14.

### External Lighting

- 16 Details of any external lighting to be used on the site shall first be submitted to and approved in writing by the Local Planning Authority prior to its installation/erection in that phase of development. The information shall include a layout plan with beam

orientation and schedule of equipment in the design (luminaire type, mounting height, aiming angles, and luminaire profiles) and shall detail any measures to be taken for the control of any glare or stray light arising from the operation of artificial lighting. Thereafter the artificial lighting shall be installed, operated and maintained in accordance with the approved scheme.

Reason: In the interests of amenity, ecology and minimising light pollution in compliance with Policies SP14, SP16 and SP20.

#### Sustainable travel

- 17 Cycle hoops for customers and secure cycle storage for staff for each unit shall be installed prior to each unit being brought into use.

Reason: To encourage the use of modes of transport other than private vehicles in the interests of sustainability in compliance with Policy SP20.

#### Electric Vehicle Charging Points

- 18 Prior to the commencement of any aboveground construction work a scheme for the provision of electric vehicle charging points across the site shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the EV charging points for each unit shall be installed in accordance with the approved details prior to each unit being brought into use.

Reason: To promote sustainable transport and in accordance with the development principles for the site in compliance with Policy SP18.

#### Contamination

- 19 Development shall not begin until an investigation and risk assessment of land contamination has been completed by competent persons and a report of the findings submitted to and approved in writing by the Local Planning Authority. This shall include an appropriate survey of the nature and extent of any contamination affecting the site, and an assessment of the potential risks to human health, controlled waters, property and ecological systems. Reports shall be prepared in accordance with Contaminated Land Report 11 and BS 10175 (2013) Code of practice for the investigation of Potentially Contaminated Sites.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other receptors and to satisfy Policy SP17 and the NPPF.

- 20 Where land affected by contamination is found which poses risks identified as unacceptable, no development or remediation shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use has been submitted to and approved in writing by the Local Planning Authority. The scheme must include proposed remediation objectives and remediation criteria, an appraisal of remedial options and proposal of the preferred option(s), all works to be undertaken, and a description and programme of the works to be undertaken including the verification plan.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be

carried out safely without unacceptable risks to workers, neighbours and other receptors and to satisfy Policy SP17 and the NPPF.

- 21 Unless otherwise agreed in writing by the Local Planning Authority, the dwelling shall not be occupied (or the site shall not be brought into use) until the approved scheme of remediation has been completed, and a verification report demonstrating the effectiveness of the remediation carried out has been submitted to and approved in writing by the Local Planning Authority. The verification report shall include a description of the works undertaken and a photographic record where appropriate, the results of any additional monitoring or sampling, evidence that any imported soil is from a suitable source, and copies of relevant waste documentation for any contaminated material removed from the site.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other receptors and to satisfy Policy SP17 and the NPPF.

- 22 In the event that contamination is found at any time when carrying out the approved development, that was not previously identified, it must be reported immediately to the Local Planning Authority, and work must cease until an appropriate investigation and risk assessment must be undertaken. Where remediation is necessary, a remediation scheme must be prepared by competent persons and submitted to the Local Planning Authority for approval. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other receptors and to satisfy Policy SP17 and the NPPF.

#### Crime prevention

- 23 Prior to any unit being brought into use a comprehensive Management Policy shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall take account of the observations, advice and recommendations contained within the Designing out Crime Report ref. 527-1-2023, dated 21 November 2023 and demonstrate how the operators have considered crime and disorder and what measures they intend to put in place to reduce the likelihood of an increase in these levels.

Reason: To satisfy paragraphs 96 and 135 of the NPPF and Policy SP16.

#### **INFORMATIVE**

Contamination - The Phase I desktop survey (MT/DS/4656v2) submitted in the 14/00426/MOUTE application is acceptable and can be used, but in addition a Phase II site investigation is also required to quantify the risks set out in the conceptual site model of the Phase I desktop report.

**Target Determination Date:** 08.02.2024

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